

Message Text

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PAGE 01 STATE 005400
ORIGIN L-03

INFO OCT-01 ISO-00 DHA-02 ORM-02 IO-13 AF-08 ARA-06 EA-07
EUR-12 NEA-10 SS-15 PRS-01 SCA-01 VO-03 INR-07 SY-05
SSO-00 INRE-00 /096 R

DRAFTED BY L:SMSCHWEBEL
APPROVED BY L:SMSCHWEBEL
D/HA/ORM JCARLIN
D/HA JWILSON
-----110138Z 129685 /64
O 110106Z JAN 77
FM SECSTATE WASHDC
TO USMISSION GENEVA IMMEDIATE

C O N F I D E N T I A L STATE 005400

STADIS////////////////////////////////

E.O. 11652:

TAGS:SREF, UNHCR

SUBJECT: DRAFT CONVENTION ON TERRITORIAL ASYLUM

1. THE GENERAL COUNSEL'S OFFICE OF INS TELEPHONED THE FOLLOWING MEMORANDUM TO D/HA ON JAN. 7.
2. "THE PROPOSED CONVENTION ON TERRITORIAL ASYLUM FOR THE FIRST TIME WOULD OBLIGATE A CONTRACTING STATE PURSUANT TO 'TREATY' TO USE ITS BEST ENDEAVORS TO GRANT ASYLUM TO ANY ELIGIBLE PERSON.

"AN ELIGIBLE PERSON IS DEFINED IN TERMS SIMILAR TO THOSE WHICH DEFINE A REFUGEE IN THE JULY 28, 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES. ELIGIBILITY IS ACCORDED
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TO A PERSON WHO OWING TO A WELL-FOUNDED FEAR OR PERSECUTION FOR REASON OF RACE, RELIGION, POLITICAL OPINION, NATIONALITY OR MEMBERSHIP IN A SOCIAL GROUP IS UNABLE OR UNWILLING TO RETURN TO THE COUNTRY OF HIS NATIONALITY OR FORMER HABITUAL RESIDENCE IF STATELESS. THERE IS NO PROVISION FOR NUMERICAL LIMITATIONS ON THE GRANT OF ASYLUM BY A CONTRACTING STATE.

"THE LIBERAL ELIGIBILITY PROVISION AND THE ABSENCE OF A NUMERICAL LIMITATION RAISE AN EXTREMELY IMPORTANT QUESTION.

ASSUME A COUNTRY CONTIGUOUS TO THE U.S. TURNS COMMUNIST AND CLOSES ALL PLACES OF RELIGIOUS WORSHIP. IF A HALF MILLION PERSONS IN THAT COUNTRY SEEK ADMISSION TO THE U.S. UNDER THE PROPOSED CONVENTION ON THE GROUND OF RELIGIOUS PERSECUTION BECAUSE THEY ARE DEPRIVED OF THE OPPORTUNITY TO WORSHIP IN THE PLACE OF THEIR CHOICE, WOULD THE U.S. HAVE TO GRANT THEM ASYLUM?..."

3. WE PROPOSED TO RESPOND TO INS AS FOLLOWS.

4. "THE QUESTION RAISED IN THE INS MEMORANDUM OF JAN. 7 IS CLEARLY AN IMPORTANT ONE. INS IS CORRECT IN POINTING OUT THAT THERE IS NO PROVISION FOR NUMERICAL LIMITATIONS ON THE GRANT OF ASYLUM BY A CONTRACTING STATE. IT POSES THE HYPOTHETICAL CASE OF A COUNTRY CONTIGUOUS TO THE UNITED STATES PERSECUTING ITS CITIZENS ON RELIGIOUS GROUNDS AND INQUIRES WHETHER, IF A HALF MILLION PERSONS IN THAT NEIGHBORING COUNTRY SHOULD SEEK ADMISSION TO THE UNITED STATES UNDER THE CONVENTION, THE U.S. WOULD HAVE TO GRANT THEM ASYLUM.

"ARTICLE 1 OF THE CONVENTION WOULD IMPOSE ON A CONTRACTING STATE THE OBLIGATION TO USE 'ITS BEST ENDEAVORS IN A HUMANITARIAN SPIRIT TO GRANT ASYLUM IN ITS TERRITORY TO ANY PERSON' ELIGIBLE FOR THE BENEFITS OF THE CONVENTION. PLAINLY, THIS IS NOT AN ABSOLUTE OBLIGATION BUT A CONDITIONA
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ONE: STATES ARE OBLIGED TO USE NO MORE THAN THEIR 'BEST ENDEAVORS.'

"UNDER THE REFORMULATION OF ARTICLES 3 AND 4 WHICH THE UNITED STATES DELEGATION, WITH THE CLEARANCE OF INS AND IN RELIANCE UPON ITS MEMORANDUM OF DECEMBER 22, 1976, FROM COMMISSIONER CHAPMAN TO THE STATE DEPARTMENT'S COORDINATOR FOR HUMANITARIAN AFFAIRS, HAS BEEN AUTHORIZED TO PROPOSE -- AND WHICH THE GENEVA MISSION HAS CIRCULATED TO A NUMBER OF DELEGATIONS AND THE UNHCR PURSUANT TO DEPARTMENTAL INSTRUCTIONS -- 'NO PERSON' ENTITLED TO THE BENEFITS OF THE CONVENTION SHALL BE SUBJECTED TO REJECTION AT THE FRONTIER OF A CONTRACTING STATE WHERE HIS FREEDOM WOULD BE THREATENED ON SPECIFIED GROUNDS, INCLUDING PERSECUTION FOR RELIGIOUS REASONS. AS THAT MEMORANDUM SPECIFIES, '...THE SERVICE CONSIDERS THAT THE UNITED STATES WOULD BE OBLIGED UNDER OUR OWN LONG STANDING HUMANITARIAN NATIONAL POLICY, NOT TO REJECT A REFUGEE AT OUR OWN FRONTIER WHENEVER WE HAD DETERMINED THAT SUCH REJECTION

WOULD SURELY PUT HIM IN THE HANDS OF THOSE WHO WOULD PERSECUTE HIM'. THE DEPARTMENT OF STATE IS IN FULL AGREEMENT WITH THIS POSITION.

"A FURTHER PERTINENT ARTICLE OF THE PROPOSED CONVENTION IS ARTICLE 5, WHICH PROVIDES THAT: 'WHENEVER A CONTRACTING STATE EXPERIENCES DIFFICULTIES IN THE CASE OF A SUDDEN OR MASS INFLUX, OR FOR OTHER COMPELLING REASONS, IN GRANTING OR CONTINUING TO GRANT, THE BENEFITS OF THIS CONVENTION, EACH CONTRACTING STATE SHALL, AT THE REQUEST OF THAT STATE, THROUGH THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, OR ANY OTHER AGENCY OF THE UNITED NATIONS WHICH MAY SUCCEED IT, OR BY ANY OTHER MEANS CONSIDERED SUITABLE, TAKE SUCH MEASURES AS IT DEEMS APPROPRIATE, IN CONJUNCTION WITH OTHER STATES OR INDIVIDUALLY, TO SHARE EQUITABLY THE BURDEN OF THAT STATE'. THIS ARTICLE CLEARLY CONTEMPLATES THE POSSIBILITY THAT A STATE MAY BE SUBJECTED

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TO A 'MASS INFLUX' AND THAT SUCH AN INFLUX MAY GIVE RISE TO 'DIFFICULTIES'.

"WHILE THE BASIC PROVISION OF THE CONVENTION SET OUT IN ARTICLE 1 RESPECTING 'BEST ENDEAVORS' APPEARS TO RESERVE TO THE CONTRACTING STATE A MEASURE OF FLEXIBILITY, THE THRUST OF ARTICLES 3, 4 AND 5 DESCRIBED ABOVE IS SUBJECT TO THE INTERPRETATION THAT A CONTRACTING STATE WOULD BE OBLIGED TO GRANT ASYLUM TO HALF A MILLION RELIGIOUS PERSECUTEES. IN THE CASE OF THE UNITED STATES, THAT WOULD NOT BE AN ACT INCONSISTENT WITH RECENT TRADITION, AS PRECEDENTS OF ACCORDING ASYLUM TO HUNDREDS OF THOUSANDS OF CUBAN AND VIETNAMESE REFUGEES DEMONSTRATES. NEVERTHELESS THE QUESTION MAY BE FAIRLY POSED, SHOULD THE UNITED STATES AT THE CURRENT PLENIPOTENTIARY CONFERENCE SEEK ANY SAFEGUARD FOR ITSELF AND OTHER POTENTIAL CONTRACTING STATES SIMILARLY SITUATED?

"THE STATE DEPARTMENT DOES NOT FAVOR INTRODUCTION OF ANY AMENDMENT TO THE CURRENT OR PROPOSED REVISED TEXT OF THE CONVENTION WHICH WOULD MEET THE POINT RAISED BY THE INS. IT RATHER SUGGESTS THAT, AT AN APPROPRIATE POINT IN THE PROCEEDINGS OF THE CONFERENCE, THE U.S. DELEGATION PLACE ON RECORD A STATEMENT OF THE FOLLOWING SUBSTANCE: 'IN VIEW OF THE PROVISIONS OF THE DRAFT CONVENTION, PARTICULARLY ARTICLES 1, 3, 4 AND 5, THE U.S. DELEGATION RECOGNIZES THAT NO LIMITATION ON THE NUMBER OF PERSONS TO WHICH A CONTRACTING STATE IS OBLIGED TO ACCORD ASYLUM IS CONTAINED IN THE CONVENTION. IT DOES NOT BELIEVE THAT SUCH A LIMITATION SHOULD BE INTRODUCED INTO THE CONVENTION. IT NOTES, MOREOVER, THAT ARTICLE 5 CONTEMPLATES THE POSSIBILITY

OF A CONTRACTING STATE EXPERIENCING DIFFICULTIES IN THE
CASE OF A SUDDEN OR MASS INFLUX OF PERSONS SEEKING ASYLUM;
THUS THE POSSIBILITY OF A 'MASS' INFLUX IS RECOGNIZED.
AT THE SAME TIME, THE BASIC OBLIGATION OF A CONTRACTING

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DRAFTED BY: L:SMSCHWEBEL

APPROVED BY: L:STEPHEN M SCHWEBEL

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R 120610Z JAN 77
FM SECSTATE WASHDC
INFO USMISSION USUN NEW YORK 0000

C O N F I D E N T I A L STATE 005400

STADIS//////////

FOLLOWING TEL SENT ACTION GENEVA FROM STATE JAN 11:

QUOTE C O N F I D E N T I A L STATE 005400

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: REFUGEES, AGREEMENTS, POLITICAL ASYLUM, DIPLOMATIC COMMUNICATIONS
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Copy: SINGLE
Sent Date: 11-Jan-1977 12:00:00 am
Decaption Date: 22 May 2009
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Source: CORE
Document Unique ID: 00
Drafter: SMSCHWEBEL
Enclosure: PER SCHWEBEL'S OFFICE
Executive Order: GS
Errors: N/A
Expiration:
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Litigation Codes:
Litigation History:
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Original Classification: CONFIDENTIAL
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Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
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Secure: OPEN
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Subject: DRAFT CONVENTION ON TERRITORIAL ASYLUM
TAGS: SREF, UNHCR
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22 May 2009
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